

## **PUBLIC NOTICE**

The Chestnuthill Township Board of Supervisors will conduct a public hearing on Tuesday, March 17, 2009, at 6:30 p.m., immediately preceding a regularly scheduled Board of Supervisors meeting at the Township Municipal Building along PA Route 715 in Brodheadsville, PA for the purpose of taking public comment, deliberation and action on a proposed OUTDOOR WOOD-FIRED BURNER/FURNACE ORDINANCE. A summary of the proposed Ordinance is as follows:

### **Section 1. – Title.**

This Ordinance shall be known as the “Chestnuthill Township Outdoor Wood-Fired Burner/Furnace Ordinance.”

### **Section 2. – Legislative Intent.**

Although outdoor wood-fired burners/furnaces may provide an economical alternative to conventional heating systems, concerns have been raised regarding the safety and environmental impacts of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions. This Ordinance is intended to ensure that outdoor wood-fired burners/furnaces are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety and general welfare of the residents of Chestnuthill Township.

### **Section 3. – Authority.**

This Ordinance is ordained and enacted under the authority granted by sections 1601 and 1529 of the Second Class Township Code, 53 P.S. Sections 66601 and 66529.

### **Section 4. – Definitions and Word Usage.**

CLEAN WOOD – wood that does not have paint, stains, or other types of coatings, and wood that has not been treated with substances, including but not limited to, copper arsenate, creosote, or pentachlorophenol, and wood pellets made from clean wood.

CODE ENFORCEMENT OFFICER – The Zoning Officer or other person appointed by the Supervisors to administer and enforce this Ordinance whose duties shall include responding to resident questions and complaints and performing other tasks as the Township Supervisors may assign.

EXISTING OUTDOOR WOOD-FIRED BURNER/FURNACE – An Outdoor Wood-Fired Burner/Furnace that was purchased and installed prior to the effective date of this Ordinance.

**OUTDOOR WOOD-FIRED BURNERS/FURNACES** – a fuel burning device designed to (1) burn wood or other manufacturer approved fuel products (i.e. corn and coal); (2) that the manufacturer specifies for outdoor installation or installation in structures not normally occupied by humans (e.g., garages); and (3) heats building space and/or water via the distribution, typically through pipes, of a fluid heated in the device, typically water or a water/antifreeze mixture.

**PERSON** – Any individual, firm, partnership, corporation, association, institution, cooperative enterprise, municipality, municipal authority, governmental entity or agency, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

**STACK or CHIMNEY** – Any vertical structure enclosing a flue or flues that carry off smoke or exhaust from a solid fuel fired heating device or structure, including that part of the structure extending above a roof.

### **Section 5. – Permits Required.**

#### **Installation Permit:**

Any person desiring to install an outdoor wood-fired burner/furnace within Chestnuthill Township shall obtain a permit from the Code Enforcement Officer and shall pay a permit fee set by the Township Supervisors by resolution.

#### **Uniform Construction Code Permit:**

The applicant must obtain a Uniform Construction Code permit for the installation of the outdoor wood-fired burner/furnace and its connection to the mechanical system of the structure it will serve.

### **Section 6. – Suspension of Permit.**

A permit issued pursuant to this Ordinance may be suspended as the Code Enforcement Officer or other person appointed by the Governing Body to administer and enforce this Ordinance may determine to be necessary to protect the public health, safety and welfare of the residents of Chestnuthill Township if any of the following conditions occur:

1. Malodorous air contaminants from the Outdoor Wood-Fired Burner/Furnace are detectable outside the property of the person on whose land the Outdoor Wood-Fired Burner/Furnace is located;
2. The emissions from the Outdoor Wood-Fired Burner/Furnace interferes with the reasonable enjoyment of life on neighboring property;
3. The emissions from the Outdoor Wood-Fired Burner/Furnace cause damage to vegetation on neighboring property;
4. The emissions from the Outdoor Wood-Fired Burner/Furnace are or may be harmful to human or animal health,

5. The burning of any material referenced in Section 10.2 of this ordinance.

A suspended permit may be reinstated once the condition which resulted in suspension is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition which has previously resulted in suspension of a permit shall be considered a violation of this Ordinance subject to the penalties provided within this Ordinance.

**Section 7. – Existing Outdoor Wood-Fired Burners/Furnaces.**

Any Outdoor Wood-Fired Burners/Furnaces in existence on the effective date of this Ordinance shall be permitted to remain, provided that the owner applies for and receives a certificate of a non-conformance from the Zoning Officer within one year of the effective date of this Ordinance. If the owner of an existing Outdoor Wood-Fired Burner/Furnace does not receive a certificate of a non-conformance within one year of the effective date of this Ordinance, the Outdoor Wood-Fired Burner/Furnace shall be removed and is subject to the regulations provided for in Section 11 of this Ordinance.

**Section 8. – Installation of Outdoor Wood-Fired Burners/Furnaces.**

Any person desiring to install an outdoor wood-fired burner/furnace within the municipality shall obtain a permit from the Code Enforcement Officer. The applicant for such a permit shall meet the following requirements:

1. Present a plan showing all property lines, the locations and distances of all dwellings or occupied buildings on adjoining properties, and the proposed location of the outdoor wood-fired burner/furnace.
2. Locate the outdoor wood-fired burner/furnace at least 200 feet from any occupied structure not located on the lot on which the outdoor wood-fired burner/furnace will be located.
3. Locate the outdoor wood-fired burner/furnace at least 175 feet from all property lines.
4. The outdoor wood-fired burner/furnace shall have a stack or chimney that extends to a minimum height of the residential structure roof peak of which the outdoor wood-fired burner/furnace is servicing plus two (2) feet. If there are any residential structures within 200 feet, the stack or chimney shall extend at least as high above the ground surface as the height of the roof peaks of all such residences plus two (2) feet. The maximum height of the outdoor wood-fired burner/furnace stack or chimney shall not exceed the maximum height requirement in that specific zoning district.
5. Present evidence that the applicant has obtained a Uniform Construction Code permit for the installation of the outdoor wood-fired burner/furnace and its connection to the mechanical system of the structure it will serve.

6. Provide a copy of the manufacturer's specification and instructions, which the applicant agrees to, comply with and not alter at any time. Where the manufacturer's specifications and instructions conflict with the terms of this ordinance, the more restrictive shall apply.
7. Provide proof that the outdoor wood-fired burner/furnace has been laboratory tested and listed to comply with appropriate safety standards such as UL (Underwriters Laboratories) or ANSI (American National Standards Institute) standards.
8. All outdoor wood-fired burners/furnaces shall be equipped with properly functioning spark arrestors.

The application shall be signed by all owners of the lot on which the outdoor wood-fired burner/furnace will be located and the contractor installing the outdoor wood-fired burner/furnace.

#### **Section 9. – Replacements.**

If an Outdoor Wood-Fired Burner/Furnace is replaced or upgraded, a permit shall be required pursuant to Section 5 of this Ordinance and shall comply with all sections of this Ordinance.

#### **Section 10. – Use of Outdoor Wood-Fired Burner/Furnace.**

1. The only substance that may be burned in an Outdoor Wood-Fired Burner/Furnace is clean wood (see definition, Section 4 of this Ordinance).
2. No person shall burn any of the following in an Outdoor Wood-Fired Burner/Furnace:
  - a. Any wood that does not meet the definition of clean wood.
  - b. Tires.
  - c. Lawn clippings or leaf waste.
  - d. Rubbish, garbage or recyclables, including but not limited to food wastes, food and beverage packaging, or food wraps.
  - e. Materials containing plastic.
  - f. Materials containing rubber.
  - g. Waste petroleum products.
  - h. Paint and paint thinners.
  - i. Any type of paper/cardboard.
  - j. Construction and demolition debris.
  - k. Plywood or other composite wood products.
  - l. Particleboard.
  - m. Manure.
  - n. Animal carcasses.
  - o. Asphalt products.
  - p. Used cooking oils.

3. The Outdoor Wood-Fired Burner/Furnace shall at all times be operated and maintained in accordance with the manufacturer's specifications.
4. The Outdoor Wood-Fired Burner/Furnace shall be maintained and operated in compliance with all federal, state and local requirements.
5. Any ash or other by-products from the operation of the Outdoor Wood-Fired Burner/Furnace shall be disposed of in accordance with federal, state and local requirements..

#### **Section 11. – Operation Schedule.**

Outdoor Wood-Fired Burners/Furnaces shall be operated only between October 1<sup>st</sup> and May 31<sup>st</sup>, except that any Outdoor Wood-Fired Burners/Furnaces located 1,000 feet from the nearest occupied structure or more may be operated throughout the calendar year.

#### **Section 12. – Enforcement and Penalties.**

##### **12.1 Enforcement Officer**

The Board of Supervisors shall appoint an individual, agency or firm to serve as the Enforcement Officer who shall be responsible for enforcing the terms of this ordinance.

##### **12.2 Duties of Enforcement Officer**

- A. Inspection- The Enforcement Officer, and any other individual representing the Township whose presence is necessary to complete the inspection, may inspect any premises, building or structure in accordance with Section 12.3 of this ordinance to determine whether or not a violation of this Ordinance exists.
- B. Action- Whenever an inspection discloses a violation of this ordinance, the Enforcement Officer shall prepare a report detailing the violation and a recommendation regarding how the violation can be corrected. the Enforcement Officer, upon authorization by the Board of Supervisors, shall issue a written notice to the owner and/or the occupant of the premises as set forth in Section 12.4 along with a copy of the report.
- C. Hearing Appearance- The Enforcement Officer shall appear at all hearings conducted in accordance with Section 12.6 and testify as to the violation.

### **12.3 Inspections; Permission**

The Enforcement Officer, and any other agent so authorized by the Board of Supervisors, may inspect any premises to determine whether any violations of this ordinance exist. Prior to entering upon any property to conduct an inspection, the Enforcement Officer shall obtain the permission of the owner or occupant of the property to conduct the inspection. If after due diligence, the Enforcement Officer is unable to obtain such permission, the Enforcement Officer shall have the authority to conduct the necessary inspection in accordance with this Ordinance and the applicable laws of the Commonwealth, and, if necessary, petition a competent court with jurisdiction for a court order authorizing the inspection. If a court orders the inspection, the defendant named in the order shall reimburse the Township for the costs of filing the petition and reasonable attorney's fees.

### **12.4 Notice of Violation**

Whenever an inspection discloses that a violation of this Ordinance exists, the Enforcement Officer shall, upon authorization by the Board of Supervisors, issue a Notice of Violation to the owner and/or occupant of the premises. The Notice shall:

- A.** Be in writing
- B.** Include a statement of the reasons why the Notice is being issued
- C.** Contain a copy of the Enforcement Officer's inspection report detailing the conditions constituting the violation, contain an outline of the remedial action required to come into compliance with the Ordinance and state a reasonable time to rectify the violation.
- D.** Inform the owner of the right to request a hearing before the Board of Supervisors as set forth in Section 12.6.
- E.** Inform the owner/occupant that should there be a failure to comply with the Notice or request a hearing; the individual(s) will be subject to the penalties set forth in Section 12.7 of the Ordinance, and the costs and expenses, including attorney's fees, of enforcing the terms of the Ordinance.

Except in emergency cases, the Notice shall be sent by registered mail or by certificate of mailing, or personally delivered to the owner and/or occupant of the premises upon which the violation exists. Where the owner is absent from the Township, all notices shall be deemed to be properly served if a copy of the Notice is served upon the owner personally, a copy of the Notice is sent by registered mail or by certificate of mailing to the last known address of the owner, regardless of proof of receipt, and is posted in a conspicuous place on or about the premises affected by the Notice or the owner is served

with such notice by any other method authorized under the laws of the Commonwealth of Pennsylvania.

## **12.5 Emergency Cases**

Whenever the Enforcement Officer finds that an emergency exists which requires immediate action to protect the public health, safety and welfare, he/she may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as is necessary to correct the violation and eliminate the emergency. Notwithstanding the other provisions of this Ordinance, such order shall be effective immediately.

## **12.6 Hearings**

- A. Right To Hearing-** Any person affected by any Notice which has been issued in accordance with the enforcement of any provision of this Ordinance, may request and shall be granted a hearing on the matter before the Board of Supervisors provided that such person file a written request for the hearing within ten (10) days after service of the Notice. The request shall contain a brief statement regarding the reasons for the request.
- B. Scheduling and Conduct of the Hearing-** Upon receipt of a request for a hearing, a time and place for the hearing shall be scheduled and advertised in accordance with applicable municipal requirements. All hearings shall be conducted in accordance with the Local Agency Act. The hearing shall be scheduled no later than sixty (60) days after the day on which the request was received. At the hearing, the person requesting the hearing shall be given the opportunity to be heard and show cause why the violation described in the Notice should not be abated.
- C. Board Action-** After such hearing the Board shall issue a written decision sustaining the Notice, modifying the Notice and attaching conditions or withdrawing the Notice. If the Board sustains the Notice, it shall be deemed to be a final order effective immediately.
- D. Right To Appeal-** Any aggrieved party may appeal the final order to the Court of Common Pleas of Monroe County in accordance with the provisions of the Local Agency Act. Such appeal shall not constitute a stay from the requirements of the final order unless an order to that effect is obtained from the court.
- E. Fees-** The person requesting the hearing shall pay the fee for such hearing as established by resolution of the Board of Supervisors.

## **12.7 Remedies and Penalties**

Any person who has violated or permitted the violation of any provisions of this Ordinance shall upon judgment thereof by any Magistrate District Judge be sentenced to pay a fine of not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1000), for each day the violation exists after notice from the township together with the costs of suit; and/or shall be committed to the Monroe County prison for a period not to exceed thirty (30) days. Each day of violation shall be a separate offense, for which a separate conviction may be sought. All judgments, costs, interests and reasonable attorney fees collected for a violation of this Ordinance shall be paid over to the Township.

In addition to the fines, judgments, costs and/or imprisonment remedies set forth above, the Township reserves the right to pursue all other available remedies at law or in equity under the laws of the Commonwealth of Pennsylvania.

### **Section 13. – Municipality Exempt from Liability.**

The Chestnuthill Township, and its agents, officials and representatives, shall not, under any circumstances, be liable or responsible for damages caused to any person or property by reason of the issuance of any permit under the provisions of this Ordinance, or by reason of the conduct of any burning activity in compliance with the terms and provisions of this Ordinance. The person or party responsible for any such burning activity shall bear sole liability of any damages caused as a result thereof.

### **Section 14. – Severability.**

The provisions of this Ordinance are severable. If any sentence, clause or section is for any reason found to be unconstitutional, illegal or invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as the legislative intent that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provisions not been included herein.

### **Section 15. – Repealer.**

All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.



**Section 16. – Effective Date.**

This Ordinance shall take effect five (5) days after the date of its enactment.

The proposed Ordinance shall apply to all property in Chestnuthill Township. This summary is set forth in accordance with Section 1601 of the Second Class Township Code.

A complete copy of the text of the proposed Ordinance is available for public inspection and review at the Chestnuthill Township Municipal Building between the hours of 8:00 a.m. and 4:00 p.m., at the offices of the Pocono Record on Lenox Street between Park Avenue and Broad Street in South Stroudsburg, and at the Western Pocono Community Library, 2000 Pilgrim Way, Route 115, across from Pleasant Valley Middle School in Brodheadsville.

Any person with a disability and in need of special accommodations by the Township to allow participation at the public hearing should contact Township Secretary Cathy A. Martinelli at (570) 992-7247 at least 24 hours prior to the public hearing.

Joseph P. McDonald, Jr., Esq., P.C., Solicitor  
Chestnuthill Township Board of Supervisors  
1651 West Main Street  
Stroudsburg, PA 18360